

General Terms and Conditions Governing Banking with National Bank of Kenya



These Terms and Conditions govern the opening closing and general dealing with accounts opened with the Bank and constitute the agreement between the Bank and the Customer.

1. **Definitions** - In these Terms and Conditions the following expressions shall unless the context otherwise requires have the following meanings:

"Account" means any of a savings bank account, current deposit account, fixed deposit account, call deposit account, foreign currency account, loan or other bank account opened with the Bank pursuant to an application made by the Customer to open such an account or howsoever opened;

"Bank" means National Bank of Kenya Limited its successors and assignees (whether immediate or derivative) and any of its branches;

"Business Day" means a day (other than a Sunday or gazetted public holiday in Kenya) on which banking institutions are generally open for the conduct of normal banking business in Kenya;

"Customer" means a person (whether a natural person, body corporate or incorporate, firm, corporation, club, partnership, proprietorship, association, state, administrative and governmental body whether being a separate legal entity or not trust or joint venture) who has opened an Account with the Bank and includes the Customers authorised signatories and permitted agents;

2. **Agreement** - It is hereby agreed and declared as follows:

2.1. By completing and signing the Bank's prescribed Account opening form with the Bank the Customer shall be deemed to have accepted to be bound by these Terms and Conditions in addition to other terms and condition which govern the opening, closing and general operation of specific Accounts.

3. **Customer's instructions**

3.1. The Customer hereby authorizes and directs the Bank to honour and to debit to the Customers Account, all cheques, drafts, bills, promissory notes, acceptances, negotiable instruments and orders drawn, accepted or made out in accordance with the operational instructions held by the Bank from the Customer or authorized agent, or mandated account holder and to carry out any instructions the Customer may give in connection with the Account notwithstanding that any such debiting or carrying out may cause the Account to be overdrawn or an overdraft to be increased. Where no overdraft has been agreed or the limit of overdraft has been reached, the Bank may at its discretion refuse to carry out any instructions which would result in there being an overdraft or an overdraft greater than that agreed, as the case may be or may carry out such instructions at the sole risk and liability of the Customer notwithstanding that this may result in there being an overdraft or an overdraft greater than that agreed. The Bank has the sole discretion to return any cheques paid out of any account whose overdraft limit has been exceeded or any cheques in which in the bank's opinion if paid would cause the account to be overdrawn or where the customer's account is at a minimum balance or where an overdraft has been agreed.

4. **Authorised Signatories and agent**

4.1. The Customer shall at the time of opening an Account give to the Bank in a form required by the Bank the full name, address and specimen signature of every person authorize by the Customer to operate the Account. The Account will be operated by the Customer's authorized signatories in accordance with operating instructions given to the Bank.

4.2. Notwithstanding any authority given to an agent by the Customer, the Customer shall remain liable to the Bank for all loans overdrafts and monies borrowed or incurred by an all costs charges expenses commissions and other liability whatsoever incurred or suffered by the agent pursuant to or in breach of Custom's agent's authority together with all interest thereon as determined solely by the Bank and the Customer shall indemnify the Bank (on a full unqualified indemnity basis) in respect of all liability (which liability shall include without limitation all losses actions costs claims damages charges taxes legal and other professional fees and expenses (including any value added tax on such expenses) which the Bank may incur suffer as a result of anything done or omitted to be done by the Customers agent pursuant to the authority given to the agent or in breach of such authority.

5. **Set off and consolidation**

5.1. The Bank may at any time without notice notwithstanding any settlement of account or other matter whatsoever combine or consolidate all or any of the Customer's then existing accounts and accounts in the name of the Customer or of the Customer jointly with others (whether current deposit, savings deposit, fixed, call deposit, foreign currency deposit, loan or of any other nature whatsoever whether subject to notice or not and whether in Kenya Shillings or in any other currency) wheresoever situate and notwithstanding that some other person may also be liable in respect thereof set - off or transfer any sum standing to the credit of anyone or more such accounts in or towards satisfaction of any obligations and liabilities of the Customer to the Bank whether such liabilities be present future actual contingent primary collateral several or joint. Where such combination set - off or transfer requires the conversion of one currency into another such conversion shall be calculated at the then prevailing buying rate of exchange of the Bank or such other bank in Kenya nominated by the Bank (as conclusively determined by the Bank) for purchasing the currency for which the Customer is liable with the existing currency.

5.2. The Bank is hereby irrevocably authorised by the Customer in the Customer's name and at the Customer's expense to perform such acts and sign such documents as may be required to give effect to any set - off or transfer pursuant to condition above. The foregoing provisions of this clause shall be in addition to and without prejudice to such rights of set - off combination consolidation lien and other rights whatsoever conferred on the Bank by law.

6. **Simultaneous orders in excess of funds**

6.1. Where the Bank receives from the customer several orders at approximately the same time the total amount of which exceeds the available funds of or the credit granted to the Customer, the Bank may honour the orders in whatever manner it deems fit subject to the limit of funds available in the Customer's account.

7. **Bank Charges and Interest**

7.1. The Bank shall be entitled to debit the Customer's account to recover the following:

7.1.1. Interest on overdraft accounts, loan accounts or any other facility granted by the Bank, at rate or rates agreed on with the Customer or at such other increased rate as decided by the Bank and advised to the customer or as the bank normally charges on such accounts which may be different for different accounts.

7.1.2. Interest in respect of an) temporary overdraft or any other facility notwithstanding that the interest rate has not been mutually agreed and which interest rate shall be determined by the Bank in its sole and absolute discretion from time to time.

7.2. Such interest will be calculated on daily balances and debited monthly. The Bank shall notify the Customer of any change in the rate of interest charged by a written notice of not less than 30 days prior.

7.3. The Bank shall also be entitled to debit the Customer's account to recover:

7.3.1. Charges incurred by the Bank in obtaining legal advice in connection with the Customer's dealings with the Bank or incurred by the Bank in any legal, arbitration or other proceedings arising out of such dealings.

7.3.2. Commissions levied for various services provided by the Bank at such rates and at such time or times as provided under the Bank's tariff sheet which could be revised from time to time;

7.3.3. All other expenses and charges including but not limited to fees on money transfer services, standing fees, cheque books charges, Fax, Telex, postages, cables, telephone calls, taxes, duties, value on, inspection, impositions and expenses incurred in complying with the Customer's requests, or incurred in the ordinary course if Customers' dealings with the Bank.

8. **Errors of Transmissions and inadequate Execution of Orders**

All payment orders, exchange operations and sales or purchases of stocks, bonds or shares in Kenya or elsewhere, undertaken by the Bank for the account of the Customer shall be at the Customer's own expense. Neither the Bank or any of its agents or correspondents nor any employees shall be liable for any mutilation, interruption, error or transmission, omission or delay occurring in any transaction medium (including without limitation, cables, airlines, courier services and telex and facsimile systems) however occurring.

9. **Statements of Account**

9.1. Statements of Account with be issued as the sole discretion of the Bank or on such other times as mutually agreed between the parties provided that the Bank shall be entitled to charge of statements requested for more regularly than the normal practice of the bank.

9.2. The contents of any Statements of Account or statement of any other nature which has been sent by the Bank to the Customer's to the last known address, and to which the customer has not objected within fifteen (15) days of receipt thereof, shall be deemed to have been received and approved by the Customer, shall not thereafter be challenged by the customer on any ground whatsoever, whether lack or mandate, forged or inadequate signature, endorsement, alterations thereof or otherwise.

10. **Customer to Inform Bank**

10.1. The Customer shall inform the Bank of any matter relating the Customer's Account in respect of which the Customer requires action from the Bank within a reasonable time (as determined by the Bank).

10.2. The Bank shall not be liable to the customer in respect of any matter relating to the Customer's Account in respect of which it has not received any timely communication from the Customer.

10.3. Whereas the Bank will take reasonable care to comply with the Customers communications, the Bank will nevertheless not be liable for failure to comply with any communication received from the Customer.

11. **Use of Automated Teller Machines and cards**

11.1. The Bank will issue the Customer with a card(s) if the Customer is eligible for the service subject to payment of such tariff as the Bank may impose from time to time.

11.2. The card must be signed for by the Customer immediately on receipt and may only be used by the Customer subject to the terms and agreements governing the card.

11.3. The Bank may decide at its discretion to withdraw the right to use the card, refuse to renew, replace or reissue the card or refuse any request or authorization.

11.4. The Customer and any joint card holders will jointly and individually be liable for all card transactions debited to the Customer's account.

11.5. The Bank will not be liable, responsible or accountable to the Customer in any way whatsoever for any loss, injury or damage arising from the use of any National Bank of Kenya ATM card where it can be demonstrated that such loss arises from any fraud perpetrated by Bank employees.

11.6. The Bank shall be entitled to charge the Customer for the replacement of any Card whether upon loss, destruction, expiry or otherwise.

12. **Deposit of Cheques etc**

12.1. All cheques or other orders for payments of whatsoever nature are accepted for deposit or collection at the risk of the Customer. Where any cheque or order is unpaid for any reason whatsoever other than arising out of the Bank's negligence, the Bank is entitled to debit the Customer's Account with the amount previously credited (taking into account any exchange fluctuation where relevant) in respect of that cheque or order, together with interest since the date of crediting, if the account thereby is overdrawn and any Bank charges incurred thereby.

12.2. Before making any withdrawal, the Customer must allow sufficient time to elapse after making any deposit (even of cash) in order to enable the Bank to carry out the necessary bookkeeping operations to credit the account. For the purpose of this subsection sufficient time shall be deemed to be a complete business after realization of proceeds subject to Clearing House Rules and banking practices prevailing from time to time.

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12.3. The Bank shall be entitled to recover from the Customer, by debiting the Customer's Account any money credited to the Customer in error and the Customer shall be liable to refund any shortfall, forthwith, to the Bank.

12.4. The Bank may credit the Custom with amounts paid in by third parties.

13. Drawing of Cash

a) The Bank will pay cash to the Customer where the cheque is signed in the presence of the teller by an authorized signatory or authorized signatories.

b) Where cash cheques are presented by employees or other known agents of the Customer, the employees or agent will be identified beforehand in a manner acceptable to the Bank.

c) Where the Customer requests that the payment be made under paragraph (b) the Customer shall indemnify the Bank in respect of all payments made to the presenter of the cheque whether or not the money was received by the Customer and whether or not the order for payment was in fact the order of the Customer.

14. No duty on Bank to protest

14.1. The Bank is not liable for any loss or damage suffered by any Customer if any Dishonoured bill is not noted or protested or both. The Bank will nevertheless endeavour to cause dishonored bills to be noted or protested or both (at the cost of the Customer), provided that it receives instructions to do so in a reason time.

15. Repayment of overdrawn account

15.1. The Bank shall be entitled on demand the immediate repayment (together with interest) of any amount that is overdrawn in any of the Customer's Accounts.

16. Lien

16.1. Where the Customer is indebted of the Bank and whether such indebtedness be present, future, actual, contingent, primary, collateral, several or joint, the Bank has a general lien over all properties of the Customer in the Bank's possession, including, but not limited to, cash, goods, securities or valuables deposited for safe custody or as security, cheques presented for repayment, bills and any other property movable or immovable charged to the Bank and also over all property over which by the general law the Bank has a lien.

16.2. Where the Customer is indebted in circumstances giving the Bank a right of setoff, all securities as set out in condition 13.1 above will be held as security for the debt.

16.3. The Bank may at any time after giving the Customer notice in writing dispose of and realize (without thereby incurring any liability to the Customer) any of the Customer's assets referred to in clause 13.1 above and the Customer hereby constitutes the Bank as the Customer's attorney for the purpose of conducting the sale, giving title to the assets sold and all other necessary matters. Any sum remaining after such a transaction will be held for the Customer subject to these Terms and Conditions.

16.4. Funds in foreign currencies which are subject to the Bank's lien may be set off against debts or realized at the rate of exchange current at the date of set off or realization. The Bank shall not be liable for any loss caused by exchange fluctuations.

16.5. Deposits for a given period of time may be set off against debts notwithstanding that the period of the deposit has not expired.

17. Variation and termination of relationship

17.1. The Bank may at any time, after serving a notice to the Customer, terminate or vary its bank - customer relationship with the Customer. In particular but without prejudice to the generality of the foregoing, the Bank may cancel credits which it has granted and require the immediate repayment of outstanding debts resulting there from within such time as the Bank may determine.

17.2. Upon termination, the Customer must return all plastic cards, unused cheque books and any stationary including computer banking software provided by the Bank and the Bank shall not assume any liability for Customer's failure to deliver the same to the Bank.

17.3. The Bank may at any time without notice freeze any account of the Customer;

17.3.1. - at its own instance

17.3.2. - at the instance of a Court Order or Administrative Order

18. Joint Accounts

18.1. In the event of two or more Customers holding a joint account, the following additional provisions apply:

18.1.1. The holders of a joint account authorize the Bank to pay or deliver to, or to the order of, the survivors or survivor or the executors or administrators of such survivor, any moneys standing to the credit of their joint account.

18.1.2. All liabilities on a joint account are joint and several.

19. Trust account

19.1. The account shall be operated as per the resolutions passed at the meeting of Trustees and/or Managing committee members

19.2. The trust account will be expressly so designated there must be notice to the Bank of the Trust account.

20. Limited companies accounts

20.1. There shall be a resolution authorizing the company to open and operate the account.

20.2. The Bank shall require that the directors authorised to operate the account sign mandate of operating the account any change¹ in the authorised Signatories should be advised to the Bank by means of a resolution.

21. Minor accounts

21.1. The account shall only be operated by Guardian, parent or Attorney appointed by a Court of Law

21.2. The title of the account shall be in the name of the minor

21.3. The Bank shall only accept cheques in the name of the minor to be deposited in the account.

22. Partnership accounts

22.1. In the event of the Customer being a partnership firm, the following additional provisions apply:

22.1.1. The partners shall give the Bank written instructions countermending payment of cheques, bills of exchange, promissory notes or other orders for payment when such instructions are given by any person whose name appears on the operating Instructions whether or not that person has signed the original payment instruction.

22.1.2. The partners authorize the Bank to make advances with or without security by way of overdraft, loan or in any other manner on the request of the partners for the time being and made in accordance with the operating instructions and to discount bills and promissory notes on the request of the partners for the time being, made in accordance with the operating instructions.

22.1.3. The partners authorize the Bank to accept by way of pledge, deposit, security or safe Custody anything belonging to the partnership on the instructions of the partners for the time being and made in accordance with the operating instructions, and to deliver upon the instructions of such authorized parties anything so accepted or held on the account of the firm.

22.1.4. All liabilities of the partners to the Bank are joint and several. Upon death of one partner the surviving partners shall give the bank notice of such death and of the dissolution of the partnership thereof. After dissolution of the partnership the authority of each partner to bind the firm, and other rights and obligations of the partners shall continue notwithstanding the dissolution so far as may be necessary to wind up the affairs of the partnership.

22.1.5. Upon any change in the constitution of the partnership, the partners will forthwith furnish amended operating instructions.

22.1.6. A mandate remains in force and may be acted upon by the Bank until it has either been revoked in writing by all or any of the signatories or until it has been replaced by a new mandate.

23. Fixed Deposit A/C's

The Bank may at it's sole discretion, allow premature withdrawal of fixed deposits. The Customer accepts that all such premature withdrawals will be subject to levy of penalties and charges as the Bank may determine and that these may be subject to change without notice to the Customer.

24. Freezing of Accounts

24.1. The Bank may at any time freeze at any account of the Customer after receiving instructions to do so by any appropriate authority or if there is any dispute or the Bank has doubt or any other reason (whether or not well founded) as to person or persons entitled to operate the same, without any obligation to institute inter -pleader proceedings or to take any step on its own initiative for the determination of such dispute or doubt.

25. Dormant accounts

25.1. The Bank shall at its sole discretion declare a current account or a savings bank account as dormant.

25.2. Any savings account shall be declared dormant if not operational for a period of 6 months.

25.3. The Bank shall have the sole discretion to reactivate the account if approached by the customer.

26. Closure of accounts

26.1. The Customer must specifically request the Bank to close the account by giving the Bank sufficient notice.

27. Cheque Books

27.1. Cheque books are issued subject to the Customer agreeing to use such cheque book and cheque form with the utmost care and in particular without prejudice to the generality if the foregoing the Customer agrees to ensure that:

27.1.1. That all unused cheque forms are kept in safe custody at all times and all cheque forms accounted for by the Customer;

27.1.2. That the Bank is informed in writing immediately upon discovering that any cheque book or any cheque form has been stolen, lost or mislaid;

27.1.3. That any person preparing the cheque is authorized to do so;

27.1.4. That every cheque is prepared and signed in ink or other indelible writing materials;

27.1.5. That the amount of any cheque is written as near as possible to the left side of the block provided for filling the amount in numbers to prevent any unauthorized addition of figures.

27.2. The Customer is advised that if it is known with which Bank the beneficiary of a cheque keeps his account, then the name of the Bank should be added to the crossing in order to make the cheque negotiable only through that particular Bank.

27.3. The collection of cheques shall be done by the holder of the account, and the customer shall execute an acknowledgement of receipt of cheque. The Bank shall herein not release the cheque book to any other person(s) other than the holder of the account and/or the representative authorized to operate the account under the mandate already signed by the customer(s)

27.4. On receipt, of written notice from the customer to stop payment of a cheque the Bank will immediately stop payment of the cheque and require that the customer or authorized representative thereof to sign a disclaimer in the form approved by the Bank and settles any charges levied for stopping the Cheque. The Bank will register instructions from the drawer of the cheque to stop payment of it but will not undertake any responsibility in case these instructions are overlooked. The Customer shall take all reasonable steps to search for the lost cheque and shall in immediately notify the Bank when the lost cheque is found.

27.5. Upon closure of any account the (customer will return to the Bank any unused cheque forms relating to that account).

27.6. The Bank has absolute discretion to refuse payment of any cheque not drawn on the Bank's cheque form in the manner specified by the Bank.

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28. Forged Cheques

28.1. The Bank shall not be liable in any way to the Customer for having honoured even negligently any cheque, the signature or content of which has been forged if:
 28.1.1. The Customer has facilitated such forgery either by failure to comply with any of the conditions contained herein or by his negligence in any other way; or
 28.1.2. The forgery has been perpetrated by an employee, servant, agent or contractor of the Customer.

29. Complaints

The Bank is not responsible for any matter unless the Customer has made written complaint to the Bank as soon as reasonably possible and in any event within one month after receipt of the statement setting out the transaction complained of.

30. Communications

30.1. All notices statements letters and other communications from the Bank will be sent to the last address given by the Customer, and the date on the Bank's copy of any communication is taken to the date of such dispatch in the absence of proof to the contrary.
 30.2. Any written communication from the Bank to the Customer including but not limited to any notice given pursuant to these Terms and Conditions shall be deemed to have been received by the Customer, at the date and time of delivery, and if sent to an address outside Kenya; and in proving such dispatch by post it shall be sufficient to prove that the letter containing the communication was properly stamped and addressed in accordance with the Bank's Records.
 30.3. The Bank or any of its officials shall not be held responsible or accept liability if any communication is received in error, for any losses, delays, misunderstandings, mutilations, duplications or any other irregularities due to transmission of any communication whether to or from the Customer, the Bank or any third party by delivery, post, telegraph, telephone, Email, fax, telex, or any other means of communication. If the information is received in error the customer is not authorised to view, disseminate, distribute or copy any part of it without written consent and the same should be returned to the Bank immediately.
 30.4. Change in customers address must be communicated to the Bank immediately.

31. Confidentiality and Disclosure to third parties

31.1. The Bank shall keep the information of the banking relations with the customer confidential, however the same is subject to the following exemptions:
 31.1.1. Compulsion by law -Disclosure shall be made upon the Bank receiving an order from an authorised authority where the information is in aid of a third party tracing claim; or, pursuant to a specific statutory jurisdiction
 31.1.2. Duty to public -Where the Customer's dealing is posing a danger to the state or public duty which may supersede the duty of the Bank to the Customer.
 31.1.3. The Bank's interest -Where the Bank's own interest justifies the disclosure.
 31.1.4. Where the customer has given consent for disclosure
 31.1.5. Where the disclosure is to other companies in the same group as the Bank to assist the group companies in the marketing of investments and insurance products or to protect group companies by informing them of a customer's default in repayment of its indebtedness
 31.1.6. Disclosure to credit reference agencies and or bureaus, this will be done by giving the customer at least 28 days notice of the intention to disclose.
 31.1.7. Banker's references -Where the Bank is acting within the scope of banking business and subject to the banking code of practice, when answering inquiries from another bank acting on behalf of the Customer. This will be an opinion as to the Customer's ability to support or undertake a financial transaction or commitment.

32. Borrowing from the Bank

32.1 The account holder may borrow money from the Bank, by way of overdraft or otherwise, upon such terms as may be agreed with the Bank. The Bank will be entitled to debit all such accounts interest, commission and other banking charges(including legal charges) incurred in connection with any borrowings. Nothing herein constitutes approval of overdraft facility. Any such facilities must be applied separately in each case. It is accepted that the provision of any overdraft facility or other accommodation may be granted or refused at the sole discretion of the Bank. Their continuance or withdrawal at any time is also at the Banks's sole discretion.
 32.2 The Bank may make credit reference agency searches and other inquiries when the customer asks for any borrowing products or if the customer requests an increase in overdraft or to increase borrowing from the Bank. The Customer hereby authorizes the information the Bank to share information with the Credit Reference Bureau provided that such information will be used for credit reference only.

33. Responsibility for Borrowing

33.1 Individuals and sole traders are personally liable for any money owed to the Bank.
 33.2 Joint account holders and partnerships are jointly and severally liable for money owed to the Bank even if one of the account holders has subsequently ceased to be a partner unless there is an agreement between the Bank and the Customer in writing on the same.
 33.3 Individuals authorized to give instructions on account of Clubs, Charities, Churches and Societies are individually and jointly liable for money owed to the Bank, unless otherwise agreed with the Bank.
 33.4 The signatories to a Company's or Corporation's account are not personally liable for money owed by such companies or corporations to the Bank, unless they are entered into a separate agreement to this effect with the Bank.

34. Interpretation

34.1. Unless the context otherwise requires in these Terms and Conditions:
 34.1.1. References to writing shall include any mode of reproducing words in a legible and non transitory form;
 34.1.2. References to indemnifying any person against any circumstances include indemnifying and keeping him harmless from all actions claims and proceedings from time to

time made against that person and all loss or damage and all payments costs and expenses made or incurred by that person as a consequence of or which would not have arisen but for that circumstance;
 34.1.3. References to any statute or statutory provision shall include any statute or statutory provision which amends or replaces or has amended or replaced it and shall include any subordinate legislation or other regulations made under the relevant statute;
 34.1.4. References to the masculine includes a reference to the feminine and neuter gender and vice versa; and
 34.1.5. Words importing the singular number only include the plural number and vice versa.

35. Amendments

35.1. Any addition or alteration to these Terms and Conditions made from time to time by the Bank of which notice has been given to the Customer shall be binding upon the Customer's fully, as if the same were contained in these Terms and Conditions.

36. The Bank's Liability To The Customer

a) Subject to all other provision of these Terms and Conditions, the Bank will be liable to the customer for any loss, injury or damage resulting from any willful or negligent failure, delay or error in carrying out the customer's clear and unequivocal instructions, but the Bank's liability will be lower of:
 i) The amount of such loss, injury or damage; and
 ii) The amount of any interest not received or any interest that the customer has to pay as a result of such failure, delay or error.
 b) The Bank shall not be liable to the customer for not acting on the customer's instructions for any reason under condition 2(c) or 2(i) or if the bank shall not carry out it's responsibility under these control. these include machine failure and industrial disputes.
 c) That the Bank shall not be liable in any circumstances for any losses which are not direct or which it could not have reasonably foreseen. The Bank shall not be liable for any consequential loss or loss of profits/or reputation.
 d) If the Bank suffers losses, costs, or other expenses as result of any breach of this agreement by any account holder, then the account holder shall be liable for these.

37. Indemnity

The customer hereby agrees to indemnify fully the Bank against all costs and expenses(including legal fees) incurred by the Bank in enforcing these terms and conditions and the recovery of any amounts due to the Bank or incurred by the Bank in any legal proceeding of whatever nature.

38. Death/mental Incapacity Of Sole Account Holder

The bank will not be liable to act on any instructions given until duly confirmed letters of administration are availed. In case of mental incapacity a court order appointing a guardian as litem must be availed for authority to operate the account.

Customer to please sign below

To National Bank of Kenya:

I/We have read the terms and conditions as stated above and agree that I/we/the partnership/company/association shall be bound by them in full. I/We agree that any of my/our account and my/our dealings with you, are operated on the General Terms and Conditions governing banking business with National Bank of Kenya Limited. Account holder(s) Directors/Partners/office bearers to sign below.

Name

Signature

Date

Name

Signature

Date

Name

Signature

Date

Name

Signature

Date